APPEAL NO. 010606

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 19, 2001. With respect to the issue before her, the hearing officer determined that the compensable injury sustained by the respondent (claimant) on _____, extends to his back. The appellant (carrier) urges on appeal that this determination is against the great weight and preponderance of the evidence and, additionally, that the hearing officer's decision is void as a matter of law because it was not filed with the Texas Workers' Compensation Commission (Commission) Division of Hearings within 17 days of the closing of the record. The claimant urges affirmance.

DECISION

Affirmed.

At issue in this case is whether the hearing officer erred in determining that the compensable injury sustained by the claimant extends to his back. Conflicting evidence was presented at the hearing regarding the extent of injuries sustained by the claimant on the date of injury. Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier additionally argues on appeal, without citing authority for its position, that the hearing officer's decision is void as a matter of law because it was not filed within the Commission's Division of Hearings within 17 days after the record closed. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(c) (Rule 142.16(c)) provides that the hearing officer shall file all decisions with the Commission's Division of Hearings not later than the 10th day after the close of the hearing. However, the deadline is not mandatory. Texas Workers' Compensation Commission Appeal No. 92456, decided October 8, 1992. The remedy for a "late" filed opinion under Rule 142.16(c) is not to set aside the opinion. Texas

Workers' Compensation Commission Appeal No. 950400, decided May 3, 1995. We find no merit in the carrier's assertion that the hearing officer's decision is void as a matter of law.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge